

REMARKS

This patent application presently includes claims 1-44, all of which stand rejected. The claims are amended to conform them to the language of a disclosure document which is of record, and all rejections are respectfully traversed.

All claims stand rejected as anticipated by or obvious over Saha U.S. published application No. 2005/0105508 (hereafter Saha). In response, the applicant has submitted a declaration swearing behind Saha, identifying an in-house disclosure of the invention to the assignee which predates Saha. The Examiner has refused to consider the declaration, arguing that the accompanying disclosure does not disclose the claimed invention.

In a prior reply, submitted May 3, 2010, the applicant amended the claims to conform the language thereof to the disclosure provided with the affidavit. Applicant therefore respectfully contends that the primary matter at issue in this application is the Rule 1.131 (b) affidavit.

However, in the Office Action mailed May 20, 2010, the Examiner has repeated the rejection language of the prior Office Action mailed June 4, 2009, without addressing Applicant's claim amendments or remarks in relation to the Rule 1.131(b) affidavit. The M.P.E.P. recites "Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it." See M.P.E.P. § 707.07(f). Accordingly, Applicants respectfully submit that the Office Action mailed May 20, 2010 is improper in that this action does not respond to the substance of Applicant's amendments and remarks in the reply filed May 3, 2010. Accordingly, Applicant respectfully requests that the rejection in the Office Action of May 20, 2010 be withdrawn, and that a new Office Action, responsive to the remarks and claim amendments included in Applicant's reply of May 3, 2010, be provided.

Applicant has asserted conception of the invention of this application prior to the effective date of the Saha reference coupled with due diligence from prior to the Saha reference date to the filing date of the present application. Applicant repeats this assertion here, and thus submits that the Saha reference should be withdrawn.

Since the independent claims are rejected only over the Saha reference (which has been antedated, as shown above), it follows that the outstanding rejections have been overcome, and that the independent claims are patentable. Moreover, the dependent claims are patentable by virtue of their dependency from their respective independent claims. Based on the foregoing, all pending claims are allowable.

Applicant therefore respectfully requests reconsideration and allowance in view of the above remarks and amendments. Should there remain any unanswered questions, the examiner is requested to call the undersigned at the telephone number indicated below.

Conclusion:

It is not believed that any fees are due in connection this reply. However, in the event that any fees are due and owing in connection with this matter, please charge the same, or credit any overpayment, to our Deposit Account No. 50-4711.

Dated: October 20, 2010

Respectfully submitted,

By: /Leslie S. Garmaise/
Leslie S. Garmaise, Reg. No. 47,587
KAPLAN GILMAN & PERGAMENT LLP
1480 Route 9 North, Suite 204
Woodbridge, New Jersey 07095
732-636-4500
Attorneys for Applicant